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Wall (1877), 31 Ohio St. 628, 27 Am. Rep. 533, states that the doctrine of *Cockerill v. Ins. Co.* (supra), is virtually overruled by *Dayton Ins. Co. v. Kelly* (1873), 24 Ohio St. 345, 15 Am. Rep. 612; see also, *Newark Machine Co. v. Kenton Ins. Co.*, 50 Ohio St. 549, 35 N. E. 1060, and 22 L. R. A. 768, which contains a note reviewing the various phases of the question down to 1893. In Missouri the early doctrine is modified by *Henning v. U. S. Ins. Co.*, 47 Mo. 425, 4 Am. Rep. 332, and the latter fully supported by *Lingenfelter v. Phoenix Ins. Co.* (1885), 19 Mo. App. 252, and *Duff v. F. Ass'n of Philadelphia* (1894), 56 Mo. App. 355. The United States Supreme Court in *Relief Fire Ins. Co. v. Shaw*, 94 U. S. 574, held that in the absence of statute or other positive regulation, a contract of insurance can be made by parol. For an extensive list of cases in point see COOLEY'S BRIEFS ON INS., Vol. I, p. 397. That the contract in the principal case is not within the statute of frauds is clear. Its complete performance depended upon a contingency which might have happened within a year. *Nester v. Diamond Match Co.*, 143 Fed. 72; *Warner v. T. & P. Ry. Co.*, 164 U. S. 418; *Springfield F. & M. Ins. Co. v. De Jarnett*, 111 Ala. 248, 19 So. 995; *Firemen's Fund Ins. Co. v. Norwood*, 69 Fed. 71.

JUDGMENT—CONVICTION OF CRIME—CONCLUSIVENESS IN PROSECUTION FOR PERJURY.—Defendant, when on trial for poisoning certain colts, had testified that he did not poison them; but he was convicted nevertheless, and the conviction was sustained on appeal. (See *State v. Sargood*, 77 Vt. 80, 58 Atl. Rep. 971.) Subsequently the present prosecution was begun against him on an indictment for perjury, alleged to have been committed in his testimony on the former trial. The lower court held that the record of conviction in the previous case was conclusive evidence that the defendant did poison the colts. Held, that a conviction of an offense is not *res adjudicata* in a subsequent prosecution for perjury in testifying that the offense was not committed. *State v. Sargood* (1907), — Vt. —, 68 Atl. Rep. 49.

The principles which apply to judgments in criminal cases are, in general, identical, so far as the question of estoppel is involved, with the principles recognized in civil cases. Thus a determination of an issue of fact in a criminal case is conclusive thereof in a subsequent criminal proceeding between the same parties. FREEMAN, JUDGMENTS (2nd ed.), § 319; 24 AM. & ENG. ENCY. LAW (2nd ed.), 831; *Mitchell v. State*, 140 Ala. 118, 37 So. 76, 103 Am. St. Rep. 17; *State v. Meek*, 112 Ia. 338, 84 N. W. 3, 84 Am. St. Rep. 342, 51 L. R. A. 414. As a logical result of this rule, it has been held that a prior acquittal of an offense is a conclusive adjudication in the respondent's favor upon a subsequent trial for perjury committed in swearing to his innocence. *United States v. Butler*, 38 Fed. 498; *Petit v. Commonwealth*, 22 Ky. Law Rep. 262, 57 S. W. 14; *Cooper v. Commonwealth*, 106 Ky. 909, 51 S. W. 789, 52 S. W. 524, 90 Am. St. Rep. 275, 45 L. R. A. 216, though in this case a very able dissenting opinion was rendered by Justice HOBSON. Of course a prior conviction would stand upon the same footing. It cannot be said, however, that the rule is absolute; but it would seem to apply unless the measure of proof required in the adjudged case was as great as that

required in the case on trial. FREEMAN, JUDGMENTS (2nd ed.), §§ 319, 319a; *Riker v. Hooper*, 35 Vt. 457, 82 Am. Dec. 646. This distinction is made in the principal case. Whatever the amount of evidence ordinarily adduced, there is no rule which requires more than the evidence of a single witness in criminal cases generally; but there can be no conviction of perjury on the uncorroborated testimony of a single witness. Hence the court rules that the doctrine of *res adjudicata* is inapplicable to cases of perjury. This position seems to be sound (see note by A. C. Freeman, 103 Am. St. Rep. 29), though it is not supported by the numerical weight of authority. But, see *State v. Caywood*, 96 Ia. 367, (influenced, perhaps, by the peculiar provision of the local statute); *Hutcherson v. State*, 33 Tex. Cr. App. 67, 24 S. W. 908.

MASTER AND SERVANT—INJURIES TO SERVANT—NEGLIGENCE OF VICE-PRINCIPAL.—The plaintiff was engaged by the defendant, together with other employees, to place empty wheelbarrows upon an elevator in the fifth floor of a building under construction. A boy was employed to operate the bell rope when the elevator was ready to descend. On the occasion when the accident happened, the boy was temporarily absent from his post of duty. In the absence of the bellboy the foreman of the defendant gave an order to the plaintiff and another laborer to double up the empty wheelbarrows. While the plaintiff was placing the wheelbarrows and standing with one foot on the elevator and the other on the floor, and leaning over, the foreman, without any warning to plaintiff, pulled the cord and gave the signal to the engineer in the basement and started the elevator down. Plaintiff did not know that the signal had been given, and without any warning the elevator started down, and plaintiff followed it, bumping on the sides down the elevator shaft to the basement below, thereby receiving the injuries complained of. *Held*, that the rule that a master is not liable for injuries to a servant through the negligence of a vice-principal, while acting as a co-laborer with the injured servant, and where the injury is not the result of the exercise of the authority of the vice-principal, does not exempt the master from liability where the injury results from the negligence of the vice-principal as such in combination with his negligence in the capacity of a fellow servant. *Roebbling Construction Co. v. Thompson* (1907), — Ill. —, 82 N. E. Rep. 196.

This case is illustrative of the peculiar and unique position of the Illinois courts as regards the extent they think that the vice-principal should be held to represent the master. The general rule is, that a vice-principal does not represent the master, except in so far as he is discharging some non-delegable duty, such as the furnishing of a safe place to work, safe tools, machinery and appliances, the inspection and repair thereof, warning and instructing servants, the selection and retention of competent employees, and of a sufficient number to perform the work in hand, etc., and as to all other acts is merely a fellow servant for whose negligence resulting in injury to the fellow employee the master is not liable. *Mann v. Oriental Print Works*, 11 R. I. 152; *Chicago & A. R. Co. v. May*, 108 Ill. 288; *Fitzgerald v. Honkemp*, 44 Ill. App. 365; *St. Louis, etc., R. R. Co. v. Torrey*, 58 Ark. 217; *Poorman Silver Mines v. Bryant*, 34 Colo. 49; *Hodges v. Standard Wheel Co.*, 152 Ind.